

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #10	CCRB Case #: 201801323	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/15/2018 8:38 PM	Location of Incident: Hassock Street and Beach Channel Drive	Precinct: 101	18 Mo. SOL 8/15/2019	EO SOL 8/15/2019	
Date/Time CV Reported Thu, 02/15/2018 10:50 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 02/15/2018 10:50 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jay Poggi	22681	953259	101 PCT
2. POM Michael McCarthy	19917	950855	101 PCT
3. POM Tony Peveraro	19291	959069	101 PCT
4. POM Roberto Napoli	09648	956965	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jay Poggi	Abuse: Police Officer Jay Poggi stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Michael McCarthy	Abuse: Police Officer Michael McCarthy stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Jay Poggi	Abuse: Police Officer Jay Poggi threatened § 87(2)(b) with the use of force.	
D.POM Jay Poggi	Discourtesy: Police Officer Jay Poggi spoke discourteously to § 87(2)(b)	
E.POM Jay Poggi	Force: Police Officer Jay Poggi used physical force against § 87(2)(b)	
F.POM Jay Poggi	Abuse: Police Officer Jay Poggi frisked § 87(2)(b)	
G.POM Michael McCarthy	Abuse: Police Officer Michael McCarthy frisked § 87(2)(b) and § 87(2)(b)	
H.POM Michael McCarthy	Abuse: Police Officer Michael McCarthy searched § 87(2)(b)	
I.POM Michael McCarthy	Force: Police Officer Michael McCarthy used physical force against § 87(2)(b)	
J.POM Michael McCarthy	Abuse: Police Officer Michael McCarthy threatened § 87(2)(b) with the use of force.	
K.POM Michael McCarthy	Discourtesy: Police Officer Michael McCarthy spoke discourteously to § 87(2)(b)	
L.POM Michael McCarthy	Abuse: Police Officer Michael McCarthy searched the vehicle in which § 87(2)(b) was an occupant.	
M.POM Jay Poggi	Off. Language: Police Officer Jay Poggi made remarks to § 87(2)(b) based upon race.	

Officer(s)	Allegation	Investigator Recommendation
N.POM Roberto Napoli	Abuse: Police Officer Roberto Napoli stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
O.POM Tony Peveraro	Abuse: Police Officer Tony Peveraro stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
P.POM Roberto Napoli	Abuse: Police Officer Roberto Napoli stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
Q.POM Tony Peveraro	Abuse: Police Officer Tony Peveraro stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
R.POM Roberto Napoli	Discourtesy: Police Officer Roberto Napoli spoke discourteously to § 87(2)(b)	

Case Summary

On February 15, 2018, § 87(2)(b) filed this complaint with the CCRB via the online website.

At approximately 8:38 p.m. on February 15, 2018, § 87(2)(b) parked his vehicle in front of a convenience store located at the intersection of Hassock Street and Beach Channel Drive in Queens. His friend § 87(2)(b) was with him at the time. § 87(2)(b) exited his vehicle and went into the convenience store. After making his purchase, he got back into his vehicle and started to drive away. Two plainclothes officers, PO Jay Poggi and PO Michael McCarthy of the 101st Precinct, pulled up in an unmarked vehicle and stopped § 87(2)(b) and § 87(2)(b) (**Allegations A and B: Abuse of Authority – Vehicle stop, § 87(2)(g)**). PO Poggi approached § 87(2)(b) on the driver's side of his vehicle and ordered him to exit the vehicle. When § 87(2)(b) did not exit the vehicle, PO Poggi told him, "I'm going to fucking pull you out of that door if you don't get out of the car." He also told § 87(2)(b) "Step out or I'm going to rip you out" (**Allegation C: Abuse of Authority – Threat of force, § 87(2)(g)**; **Allegation D: Discourtesy – Word, § 87(2)(g)**).

§ 87(2)(b) exited his vehicle. Once he was outside, PO Poggi allegedly forced him to the ground. PO Poggi allegedly punched and kicked § 87(2)(b) several times while he was on the ground. He then allegedly dragged § 87(2)(b) along the ground to the rear of his vehicle (**Allegation E: Force – Physical force, § 87(2)(g)**). PO Poggi allegedly frisked § 87(2)(b) while he was still on the ground (**Allegation F: Abuse of Authority – Frisk, § 87(2)(g)**). At the rear of the vehicle, PO McCarthy frisked § 87(2)(b) and § 87(2)(b) (**Allegation G: Abuse of Authority – Frisk, § 87(2)(g)**). He also allegedly searched § 87(2)(b)'s person (**Allegation H: Abuse of Authority – Search, § 87(2)(g)**). During the frisk, PO McCarthy allegedly squeezed § 87(2)(b)'s testicles (**Allegation I: Force – Physical force, § 87(2)(g)**). This action allegedly caused § 87(2)(b) to jump in response. PO McCarthy allegedly told § 87(2)(b) "If you move again, I'm going to knock you the fuck out" (**Allegation J: Abuse of Authority – Threat of force, § 87(2)(g)**; **Allegation K: Discourtesy – Word, § 87(2)(g)**). PO McCarthy then searched the interior of § 87(2)(b)'s vehicle (**Allegation L: Abuse of Authority – Vehicle stop, § 87(2)(g)**). Nothing was recovered from § 87(2)(b)'s person or his vehicle. PO Poggi then allegedly made a remark to § 87(2)(b) about "these monkeys over here." § 87(2)(b) interpreted this as a racial slur directed at residents of the nearby § 87(2)(b), a NYCHA development (**Allegation M: Offensive Language – Race, § 87(2)(g)**). PO Poggi and PO McCarthy ultimately released § 87(2)(b) and § 87(2)(b) without arresting them or issuing them summonses.

§ 87(2)(b) and § 87(2)(b) returned to § 87(2)(b)'s vehicle and drove away. They turned right onto Beach Channel Drive. Within moments, two uniformed officers, PO Tony Peveraro and PO Roberto Napoli of the 101st Precinct, pulled § 87(2)(b) over (**Allegations N and O: Abuse of Authority – Vehicle stop, § 87(2)(g)**). § 87(2)(b) pulled his vehicle over in the parking lot of a BP gas station located along Beach Channel Drive. PO Peveraro and PO Napoli approached § 87(2)(b)'s vehicle and obtained § 87(2)(b)'s license and registration. The officers decided to use their discretion and release § 87(2)(b) without issuing him a summons.

They returned to their vehicle and prepared to leave. § 87(2)(b) then reversed his vehicle and drove towards the two officers' marked vehicle, stopping within inches of it. PO Peveraro and PO Napoli then initiated a second vehicle stop (**Allegations P and Q: Abuse of Authority – Vehicle stop, § 87(2)(g)**). PO Napoli allegedly told § 87(2)(b) during this second stop, “Now get out of the fucking car” (**Allegation R: Discourtesy – Word, § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) exited their vehicle. PO Peveraro and PO Napoli ultimately decided to release § 87(2)(b) and § 87(2)(b) again without issuing them summonses. The officers returned to their vehicle and left. § 87(2)(b) and § 87(2)(b) had no further police interactions that night.

§ 87(2)(b) provided four video clips that he recorded across all three vehicle stops on his cell phone. The clips were attached in IAs #22-25 (See Board Review #01-04: Cell Phone Footage). Video footage was also obtained from a security camera at the BP gas station. It was attached in IA #29 (See Board Review #05: Gas Station Footage). This footage was summarized in IA #36 (See Board Review #06: Video Summary). No other footage was found for this incident.

§ 87(2)(a) CVR § 50-b

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jay Poggi stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Police Officer Michael McCarthy stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

An attorney was consulted in regards to this allegation.

It is undisputed that PO Poggi and PO McCarthy stopped § 87(2)(b) and § 87(2)(b) and removed them from § 87(2)(b)'s vehicle. § 87(2)(b)'s vehicle was parked in front of a convenience store near the intersection of Beach Channel Drive and Hassock Street. Neither of them was arrested or issued a summons.

§ 87(2)(b) provided a telephone statement on February 22, 2018. He was interviewed at the CCRB on February 23, 2018 (See Board Review #07-08: § 87(2)(b)'s Statements). His statements were generally consistent with each other, except as noted. § 87(2)(b) stated that his vehicle, a green 1999 Honda Civic, was parked directly across the street from the convenience store, on the opposite side of the street. The vehicle was in proper working order. § 87(2)(b) denied that there were any markings or signage to indicate that he was not allowed to park on that section of the road. § 87(2)(b) turned off his engine. He and § 87(2)(b) exited his vehicle and walked into the store, where they bought soda. They returned to the vehicle about five minutes later and got back inside. § 87(2)(b) was in the driver's seat and § 87(2)(b) was in the front passenger's seat. PO Poggi and PO McCarthy then drove up in their unmarked vehicle and stopped directly in front of § 87(2)(b)'s vehicle. § 87(2)(b) did not recall if they engaged their emergency lights or sirens, or if he had turned on his vehicle's engine by that time. Both officers exited their vehicle. PO Poggi went to § 87(2)(b) on the driver's side, while PO

McCarthy went to § 87(2)(b) on the passenger's side. PO Poggi told § 87(2)(b) that he was parked illegally.

§ 87(2)(b) provided a telephone statement on February 23, 2018 (See Board Review #09: § 87(2)(b)'s Statement). His statement was generally consistent with § 87(2)(b)'s § 87(2)(b). § 87(2)(b) also stated that § 87(2)(b) parked in front of the convenience store. He did not elaborate on where the vehicle was positioned relative to the store, but did state that it was in a normal parked position. He did not state whether § 87(2)(b) turned the car's engine back on before the officers drove up to § 87(2)(b)'s vehicle, or if the officers engaged their emergency lights or sirens. § 87(2)(b) made no mention of either officer providing an explanation for the stop.

Efforts were made to schedule § 87(2)(b) for a sworn statement. He declined to schedule an interview during his telephone statement, and did not respond to further contact attempts (See Board Review #10: Contact Attempts).

PO Poggi and PO McCarthy were both interviewed at the CCRB on May 8, 2018 (See Board Review #11-12: MOS Statements). They both stated that § 87(2)(b) parked his vehicle improperly in front of the convenience store. Both officers stated that § 87(2)(b) stopped his vehicle on the same side of the street as the convenience store, rather than the opposite side. PO Poggi stated that the vehicle was parked about five feet away from the curb, while PO McCarthy stated that the vehicle was double-parked. § 87(2)(b) left the vehicle's engine running while they went into the store. Both officers decided to initiate a vehicle stop to determine why the vehicle was left parked improperly. They denied that any other factors contributed to this decision. They denied discussing their observations or their planned course of action with each other before proceeding. No other factors beyond the vehicle's position contributed to their decision. At the conclusion of this stop, both officers decided to exercise their discretion and declined to issue § 87(2)(b) a summons for parking improperly.

PO Poggi and PO McCarthy prepared Stop, Question and Frisk Reports to document this incident (See Board Review #13: Stop, Question and Frisk Reports). PO Poggi prepared a report for § 87(2)(b) while PO McCarthy prepared a report for § 87(2)(b). Both reports state that the stop was initiated after § 87(2)(b)'s vehicle was observed illegally parked approximately five feet away from the curb in a position that obstructed traffic. The vehicle was left unoccupied while the engine was running for several minutes.

§ 87(2)(b) provided cell phone footage that he recorded of this first vehicle stop during his sworn statement. The video is recorded from his lap when PO Poggi first approached his vehicle. At the start of the video, PO Poggi asks § 87(2)(b) to exit the vehicle. § 87(2)(b) asks why he is being stopped. PO Poggi replies, "Why are you being stopped? You parked in a No Parking area, first of all." PO Poggi does not provide any other information about why the stop was initiated.



201801323 - Video 1.mp4

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Jay Poggi threatened § 87(2)(b) with the use of force.

Allegation (D) Discourtesy: Police Officer Jay Poggi spoke discourteously to § 87(2)(b)

§ 87(2)(b)'s video footage of the first vehicle stop depicts his conversation with PO Poggi at the driver's-side window. Beginning at 0:00, PO Poggi tells § 87(2)(b) three times to step out of his vehicle. § 87(2)(b) asks him why he has to get out of his vehicle. PO Poggi replies that § 87(2)(b) is making him "uncomfortable." § 87(2)(b) does not exit the vehicle. At 0:33 on the recording, PO Poggi states, "I'm going to fucking pull you out of that door if you don't get out of the car." He then goes on to state, "Step out or I'm going to rip you out."



201801323 - Video 1.mp4

§ 87(2)(b) did not allege any further threats or profanity made while he was inside of his vehicle beyond what was recorded on his video.

§ 87(2)(b) stated that PO Poggi used the word "fuck" several times while speaking to § 87(2)(b) but did not recall any specific statements that PO Poggi made. He did not mention PO Poggi threatening to use force against § 87(2)(b).

PO Poggi stated that after he approached § 87(2)(b)'s vehicle, § 87(2)(b) rolled up his window. PO Poggi asked him to roll the window down, but received no response. § 87(2)(b) reached towards the vehicle's center console. He did not recall which hand § 87(2)(b) used to reach, or if he touched or handled any objects in the center console. PO Poggi explained that § 87(2)(b)'s refusal to respond to him and his motions towards the center console caused him to fear for his safety. He therefore told § 87(2)(b) to exit the vehicle. § 87(2)(b) continued to ignore PO Poggi, so he repeated his command several times. He did not recall how he phrased his commands, and did not recall if he used any profanity while doing so. When PO Poggi was shown § 87(2)(b)'s video footage, he identified himself as the officer who stated, "I'm going to fucking pull you out of that door if you don't get out of the car." He did not independently recall making the statement, and did not recall why he used that language.

PO McCarthy stated that he initially approached § 87(2)(b) on the passenger's side, while PO Poggi went to the driver's side with § 87(2)(b). PO McCarthy did not recall if § 87(2)(b)'s driver's-door window was rolled up or down. He observed that § 87(2)(b) still had his hand on the gear shift as PO Poggi approached. He also moved his hands towards his pants pockets

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several times. He did not see any objects inside of the vehicle, including any weapons. PO McCarthy initially stated that he did not recall what, if anything, PO Poggi and § 87(2)(b) were saying to each other. He later stated that PO Poggi told § 87(2)(b) to turn off the engine, to stop reaching towards his pockets, and not to reach for any objects inside of the vehicle. He did not recall how § 87(2)(b) responded to these instructions. PO McCarthy then walked around to the driver's side of the vehicle and told § 87(2)(b) to exit the vehicle. He did not recall PO Poggi issuing such a command. He did not recall PO Poggi using profanity. When shown § 87(2)(b)'s video, PO McCarthy identified PO Poggi as the officer who stated both "I'm going to fucking pull you out of that door if you don't get out of the car," and, "Step out or I'm going to rip you out."

Officers may, as a precautionary measure and without particularized suspicion, direct the occupants of a lawfully stopped vehicle to step out of the car. People v. Garcia, 20 N.Y.2d 317 (2012). NYPD Patrol Guide procedure 203-09 states that officers must be courteous and respectful while dealing with members of the public. Officers may use limited profanity in an effort to gain control of a dynamic situation, but are not otherwise permitted to use profanity. PD v. Pichardo, DAO-DCT Case #2015-15012 (See Board Review #14-16: Legal Reference).

§ 87(2)(g)
[REDACTED]

[REDACTED]

[REDACTED]

Allegation (E) Force: Police Officer Jay Poggi used physical force against § 87(2)(b)

§ 87(2)(b) stated that after PO Poggi threatened to "rip" him out of the vehicle, both he and § 87(2)(b) exited the vehicle. After § 87(2)(b) stood up, he raised both of his hands at his side with open palms. PO Poggi then forced him to the ground. When asked to describe this action in further detail, § 87(2)(b) initially stated that he did not recall the specific contact that PO Poggi made with him. Later, he stated that PO Poggi grabbed him by his right shoulder and threw him down. § 87(2)(b) landed on his right side. In his telephone statement, § 87(2)(b) stated that PO Poggi punched him in the back of the head. In his sworn statement, § 87(2)(b) stated that an officer punched and kicked him four or five times on his head, back and legs. He did not see the officer who delivered these blows, but he noted that PO McCarthy was still standing on the passenger's side of the vehicle at that time. § 87(2)(b) responded to these blows by curling his body up in the fetal position. The same officer who struck him then grabbed

§ 87(2)(b) by his shirt and dragged him bodily over the ground to the back of the vehicle. § 87(2)(b) was still on the passenger's side of the vehicle while § 87(2)(b) was on the ground. § 87(2)(b) did not sustain any physical injuries during the incident, but he did experience pain in his neck and shoulder later that night.

After this incident, § 87(2)(b) sought medical treatment at § 87(2)(b) (See Board Review #17: Medical Records). He arrived at the hospital at 10:37 p.m., approximately two hours after the incident. He complained of pain in his right shoulder and lower back. § 87(2)(b) told his physicians that police officers had thrown him on the floor and hit him on the back of the head. He did not have any cuts, bruises or abrasions. He was diagnosed with a neck and shoulder strain and given ibuprofen.

§ 87(2)(b) stated that after § 87(2)(b) exited the vehicle, PO Poggi threw him to the ground. He did not describe what part of § 87(2)(b)'s body PO Poggi threw him by. PO Poggi then punched § 87(2)(b). § 87(2)(b) did not state where PO Poggi's blow landed on § 87(2)(b)'s body. PO Poggi then lifted § 87(2)(b) to his feet and walked him to the rear of the vehicle. He made no mention of PO Poggi dragging § 87(2)(b) over the ground. § 87(2)(b) did not state where he was positioned when these actions occurred.

PO Poggi stated that once § 87(2)(b) exited the vehicle, he sat down on the ground by the driver's side. He denied that he or PO McCarthy forced § 87(2)(b) to the ground. He denied that § 87(2)(b) was lying on the ground at any point. PO Poggi and PO McCarthy picked § 87(2)(b) up by his arms and lifted him back to his feet. They then walked him to the rear of the vehicle. PO Poggi denied that any other force was used during the incident. He denied that any officers punched or kicked § 87(2)(b) or dragged § 87(2)(b) over the ground.

PO McCarthy stated that § 87(2)(b) dropped his weight as soon as he exited his vehicle. § 87(2)(b) started to fall to the ground, but PO McCarthy and PO Poggi were able to grab § 87(2)(b)'s arms and hold him up. The two officers then walked § 87(2)(b) to the rear of his vehicle. PO McCarthy denied that § 87(2)(b) was on the ground at any time. PO McCarthy denied that he or PO Poggi struck § 87(2)(b) at any point.

§ 87(2)(b)'s cell phone videos did not cover the portion of the incident where this allegation occurred.

§ 87(2)(g)
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Allegation (F) Abuse of Authority: Police Officer Jay Poggi frisked § 87(2)(b)

An attorney was consulted in regards to this allegation.

§ 87(2)(b) alleged in his sworn statement that while he was still on the ground, PO Poggi frisked him by patting him on his chest and around his waist. PO Poggi did not remove any items from § 87(2)(b)'s person during this frisk. § 87(2)(b) stated that § 87(2)(b) was still on the passenger's side of the vehicle at the time of this action. § 87(2)(b) made no mention of this frisk during his initial complaint or his telephone statement.

§ 87(2)(b) did not mention PO Poggi or PO McCarthy frisking § 87(2)(b) while he was on the ground. He did not indicate where he was standing while § 87(2)(b) was on the ground.

PO Poggi and PO McCarthy both denied that PO Poggi frisked § 87(2)(b) at any point during the incident. They denied that § 87(2)(b) was frisked either while he was on the ground or before he was taken to the rear of the vehicle. Both officers acknowledged that § 87(2)(b) was frisked a short time later after he was brought to the rear of his vehicle.

§ 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Michael McCarthy frisked § 87(2)(b)

and § 87(2)(b)

An attorney was consulted in regards to this allegation.

§ 87(2)(b) stated that when the officers approached his vehicle, he placed his cell phone in his lap and started to record the officers. Neither he nor § 87(2)(b) took any other actions inside of the vehicle. After he was moved to the rear of the vehicle, he was frisked by PO Poggi. § 87(2)(b) consistently identified PO Poggi as the officer who frisked him across all of his statements. PO Poggi frisked § 87(2)(b) by patting his chest, waist, legs, ankle and groin. Nothing was removed from § 87(2)(b)'s person. PO McCarthy also frisked § 87(2)(b) at that time, but § 87(2)(b) did not see what specific actions PO McCarthy took because his attention was focused on PO Poggi. He did not know if anything was found on § 87(2)(b) during his frisk. § 87(2)(b) made no mention of any odor of marijuana emanating from his vehicle. At the time of the incident, § 87(2)(b) was carrying a lighter, cigarettes, and cash in his pants pockets.

§ 87(2)(b) stated that § 87(2)(b) started to record the officers before he exited the vehicle, but did not provide any other information about their actions inside of the vehicle. He stated that both PO Poggi and PO McCarthy frisked § 87(2)(b) at the rear of the vehicle by patting the exterior of § 87(2)(b)'s pants pockets. PO Poggi then frisked § 87(2)(b) by patting his pants pockets. Nothing was found during either of these frisks. § 87(2)(b) made no mention of any odor of marijuana in the vehicle.

PO McCarthy stated that when he first approached § 87(2)(b)'s vehicle on the passenger's side, he detected an odor of marijuana emanating from within. He did not know if the marijuana that he smelled was burning or in its vegetative state. He did not make any other observations that suggested that there was marijuana in the vehicle. PO McCarthy asked § 87(2)(b) to exit the vehicle. He then asked § 87(2)(b) if he had any weapons. PO McCarthy denied that he suspected that § 87(2)(b) had a weapon. He stated that he asked § 87(2)(b) about weapons because he "didn't feel like getting shot or stabbed that day." § 87(2)(b) replied that he was unarmed. PO McCarthy directed him to the rear of the vehicle. PO McCarthy then looked over to where PO Poggi was speaking to § 87(2)(b). He observed § 87(2)(b) move his hands towards his pants pockets several times. PO McCarthy initially stated that he did not recall what, if anything, PO Poggi and § 87(2)(b) were saying to each other. He later stated that PO Poggi told § 87(2)(b) to stop reaching towards his pockets and not to reach for any objects inside of the vehicle. He did not recall how § 87(2)(b) responded to these instructions. He did not see any objects inside of the vehicle, including any weapons. PO McCarthy then walked around to the driver's side of the vehicle and told § 87(2)(b) to exit the vehicle. § 87(2)(b) did not initially exit. When PO McCarthy opened the driver's door, however, § 87(2)(b) stood up. PO McCarthy and PO Poggi walked § 87(2)(b) to the rear of the vehicle. PO McCarthy then frisked § 87(2)(b) by patting him from "head to toe," but excluding § 87(2)(b)'s groin. PO McCarthy stated that he conducted the frisk because § 87(2)(b)'s uncooperative behavior while in his vehicle caused him to fear that § 87(2)(b) posed a threat to his safety. He was particularly concerned that § 87(2)(b) might be concealing a weapon on his person due to the fact that § 87(2)(b) had been repeatedly reaching for his pants pockets while in the driver's seat, despite being told not to by PO Poggi. Later on in his statement, PO McCarthy also stated that at an unknown time prior to this incident, the owner of the convenience store had shown him surveillance camera footage showing a male who had allegedly tried to sell a firearm near the store about two weeks earlier. § 87(2)(b) had the same age and build as the male on the video. PO McCarthy felt that § 87(2)(b) resembled the male on the video, but he was not certain of this. He did not discuss the alleged firearm sale with § 87(2)(b) because he did not feel that he had "probable cause" to link § 87(2)(b) to the suspect. PO McCarthy made no mention of § 87(2)(b) having a bulge in his pockets, but he did note that he felt a hard object in § 87(2)(b)'s front left pants pocket during the frisk. PO McCarthy denied that PO Poggi frisked § 87(2)(b). PO McCarthy did not recall if § 87(2)(b) was frisked during the incident. PO McCarthy did not observe § 87(2)(b) engage in any behavior during the incident that led him to believe that § 87(2)(b) was involved in any sort of criminal activity.

PO McCarthy prepared a Stop, Question and Frisk Report to document § 87(2)(b)'s stop. The report indicates that § 87(2)(b) was frisked because he was observed with an object suspected of being a weapon and because he was known to carry weapons. The narrative of the report states that he was frisked due to the odor of marijuana, his resemblance to the suspect who allegedly

tried to sell a firearm, and the presence of a bulge in his front left pants pocket (See Board Review #13: Stop and Frisk Reports).

PO Poggi also stated that he detected the odor of marijuana emanating from § 87(2)(b)'s vehicle as he approached. He specifically identified the odor as burning marijuana. As PO Poggi walked up towards § 87(2)(b)'s vehicle, he observed both § 87(2)(b) and § 87(2)(b) moving around inside of the vehicle. PO Poggi was unable to recall these motions in detail, stating only that § 87(2)(b) and § 87(2)(b) were moving their arm. PO Poggi reached § 87(2)(b) on the driver's side, § 87(2)(b) rolled up his window. PO Poggi asked him to roll the window down, but received no response. § 87(2)(b) reached towards the vehicle's center console. PO Poggi did not recall which hand § 87(2)(b) used to reach, or if he touched or handled any objects in the center console. PO Poggi explained that § 87(2)(b)'s refusal to respond to him and his motions towards the center console caused him to fear for his safety. He therefore told § 87(2)(b) to exit the vehicle. § 87(2)(b) continued to ignore PO Poggi, so he repeated his command several times. PO McCarthy walked over to the driver's side of the vehicle as PO Poggi issued his commands. When § 87(2)(b) refused to exit the vehicle, the officers opened § 87(2)(b)'s door. § 87(2)(b) then stood up and walked to the rear of the vehicle. As they walked, PO Poggi noticed a bulge on § 87(2)(b)'s front left pants pocket. He did not recall the bulge's size or shape. When asked what he thought the bulge was, PO Poggi stated, "Not sure, wasn't sure if it was a weapon or anything." At the rear of the vehicle, PO McCarthy frisked § 87(2)(b) by patting his waistband and pants pockets. When asked why PO McCarthy conducted this frisk, PO Poggi stated that there had been a report of an individual attempting to sell a firearm near the convenience store at an unknown time prior to the incident. PO Poggi had seen a screen capture from the store's security cameras that showed a male suspect. PO Poggi did not recall the specific information provided in the report, including the suspect's description, but he did recall noting at the time of the incident that § 87(2)(b) matched the description. As a result of this resemblance to this suspect, PO Poggi suspected that § 87(2)(b) was armed. At some point during the frisk, PO McCarthy determined that the bulge in § 87(2)(b)'s pocket was a wrench. PO Poggi did not recall how PO McCarthy determined this. After § 87(2)(b) was frisked, PO McCarthy also frisked § 87(2)(b) on his waist and pockets. When asked why § 87(2)(b) was frisked, PO Poggi stated that it was because of the unspecified movements § 87(2)(b) had made when the officers first approached § 87(2)(b)'s vehicle. PO Poggi did not make any specific observations about § 87(2)(b) that led him to believe that § 87(2)(b) was armed. PO Poggi denied that he frisked either civilian.

PO Poggi prepared a Stop, Question and Frisk Report to document § 87(2)(b)'s stop. The report stated that § 87(2)(b) was frisked on the basis of furtive movements made inside of § 87(2)(b)'s vehicle. It also cited the odor of marijuana as a factor. The report also notes that § 87(2)(b) was with another person (identified by the investigation as § 87(2)(b) who resembled a person suspected of trying to sell a firearm (See Board Review #13: Stop and Frisk Reports).

While § 87(2)(b) did not record the time during the incident when he was frisked, he did record the beginning of his interaction with PO Poggi at the driver's-side window. The video begins once PO Poggi arrives at the driver's side of § 87(2)(b)'s vehicle. The video shows that § 87(2)(b) had his window rolled down partway. He also kept his hands in front of him by the

wheel as he spoke to PO Poggi. § 87(2)(b) was not instructed to keep his hands out of his pockets or to stop reaching for objects inside of the vehicle.



201801323 - Video 1.mp4

The odor of marijuana emanating from a motor vehicle during a stop grants an officer probable cause to search the interior of the vehicle as well as the vehicle's occupants. People v. Smith, 66 A.D.3d 514 (1st Dept, 2009) (See Board Review #18: Legal Reference).

The balance of testimony indicates that PO McCarthy frisked both § 87(2)(b) and § 87(2)(b) at the rear of § 87(2)(b)'s motor vehicle. The investigation was unable to determine whether PO McCarthy possessed sufficient legal justification to do so. PO McCarthy and PO Poggi provided several factors that contributed to the decision to frisk the civilians. None of these reasons were found to be supported by a preponderance of the evidence.

Both officers stated that § 87(2)(b) made furtive movements with his arms or hands prior to his exit from the vehicle. § 87(2)(g). The officers' individual accounts of these movements were not consistent with each other. Furthermore, § 87(2)(b)'s video shows that his hands were in front of him by the steering wheel throughout his conversation with PO Poggi. PO Poggi also alleged that § 87(2)(b) and § 87(2)(b) were both making suspicious movements with their hands before he spoke to § 87(2)(b). He was not able to describe these motions, and PO McCarthy did not corroborate them in his statement. PO McCarthy denied seeing § 87(2)(b) take any actions that indicated his involvement in any criminal activity.

Both officers also stated that they suspected that § 87(2)(b) might have been armed because he resembled a suspect who had allegedly attempted to sell a firearm near the convenience store. They did not recall specific details about this report, including the particular details of the suspect's description. They only recalled that they recognized at the time of the incident that § 87(2)(b) did resemble aspects of the description. Absent further information, the investigation was unable to verify whether § 87(2)(b) resembled the suspect. Even if he did resemble the description, however, the same suspicion would not extend to § 87(2)(b).

Similarly, the officers' claim that they detected an odor of marijuana emanating from the interior of § 87(2)(b)'s vehicle cannot be verified. If the odor had been detected, it would have granted PO McCarthy and PO Poggi probable cause to believe that there was marijuana inside of the vehicle. This would have granted PO McCarthy sufficient legal justification to frisk both civilians, regardless of any suspicion that he had that they were armed. Absent further evidence, however, the investigation could not confirm whether there was an odor of marijuana in § 87(2)(b)'s vehicle.

Both officers also mentioned that § 87(2)(b) had a bulge on his front left pocket. They alleged that the bulge was eventually found to be a wrench. § 87(2)(b) denied having such an object on his person. § 87(2)(g)

§ 87(2)(g)

Allegation (H) Abuse of Authority: Police Officer Michael McCarthy searched § 87(2)(b)

It is undisputed that an officer frisked § 87(2)(b). Neither § 87(2)(b) nor § 87(2)(b) alleged that anything was taken out of § 87(2)(b)'s pockets. § 87(2)(b) stated that he had a lighter, cigarettes and cash in his pants pockets at the time.

PO McCarthy stated that once he started frisking § 87(2)(b) he felt an object in § 87(2)(b)'s front left pants pocket. He did not recall the object's size or weight, but stated that the object was several inches long and felt like it was made of metal. PO McCarthy did not know what the object might have been. After feeling the object, PO McCarthy pushed the object up to the top of § 87(2)(b)'s pocket by pressing on the exterior of the pocket. The tip of the object protruded from the pocket. PO McCarthy was then able to see that the object was a wrench. Since the wrench could be used to strike somebody, PO McCarthy pulled the wrench out of § 87(2)(b)'s pocket. He kept it until he released § 87(2)(b) from the stop, at which point he put it back in § 87(2)(b)'s vehicle. PO McCarthy denied that he reached into any of § 87(2)(b)'s pockets or took any other items from him besides the wrench.

PO Poggi had observed a bulge in § 87(2)(b)'s front left pants pocket after he exited the vehicle. He did not recall the object's size or shape. At some point during the frisk, PO McCarthy obtained the object from § 87(2)(b)'s pocket, which was found to be a wrench. PO Poggi did not see how PO McCarthy had obtained the wrench. He did not recall PO McCarthy reaching into § 87(2)(b)'s pockets during the frisk.

The Stop, Question and Frisk Report that PO McCarthy prepared for this incident indicated that § 87(2)(b) was not searched during the incident. It did note that one of the reasons that § 87(2)(b) was frisked was because he had an object with him that was suspected of being a weapon (See Board Review: Stop and Frisk Report).

An officer may remove an object detected on a suspect's person during the course of a frisk if they reasonably believe that the object is a weapon. People v. Davenport, 9 A.D.316, (1st Dept, 2004). The odor of marijuana emanating from a motor vehicle during a stop grants an officer probable cause to search the interior of the vehicle as well as the vehicle's occupants. People v. Smith, 66 A.D.3d 514 (1st Dept, 2009) (See Board Review #19, #18: Legal Reference).

§ 87(2)(g)

§ 87(2)(g)

Allegation (I) Force: Police Officer Michael McCarthy used physical force against § 87(2)(b)

§ 87(2)(a) CVR § 50-b, § 87(2)(b)

Both civilians identified the officer as PO Poggi. The investigation identified this officer as PO McCarthy. § 87(2)(b) reacted by jumping up. § 87(2)(b) stated that he experienced pain in his testicles after the incident. This caused him to start crying. § 87(2)(b) sought medical attention later that evening at § 87(2)(b)

§ 87(2)(a) CVR § 50-b, § 87(2)(b)

Both PO McCarthy and PO Poggi stated that PO McCarthy was the only officer who frisked § 87(2)(b). They denied seeing § 87(2)(b) leap up while he was being frisk. They denied seeing § 87(2)(b) cry at any point during the incident.

This portion of the incident was not captured on any of § 87(2)(b)'s cell phone videos.

§ 87(2)(g), § 87(2)(a) CVR § 50-b

Allegation (J) Abuse of Authority: Police Officer Michael McCarthy threatened § 87(2)(b) with the use of force.

Allegation (K) Discourtesy: Police Officer Michael McCarthy spoke discourteously to § 87(2)(b)

Allegation (M) Discourtesy: Police Officer Jay Poggi made remarks to § 87(2)(b) based on race.

§ 87(2)(a) CVR § 50-b, § 87(2)(b)

PO McCarthy told § 87(2)(b) “If you move again, I’m going to knock you the fuck out.” § 87(2)(b) made no further movements. PO McCarthy then completed § 87(2)(b)’s frisk without further incident. In his sworn statement, § 87(2)(b) stated that after PO McCarthy frisked § 87(2)(b)’s vehicle, PO Poggi told § 87(2)(b) “It doesn’t work for these monkeys over here, so being slick isn’t going to work for you, either.” § 87(2)(b) interpreted this remark as a racist slur against the residents of the § 87(2)(b), a NYCHA development located across the street from the convenience store.

§ 87(2)(b) made no mention of PO Poggi or PO McCarthy using profanity towards § 87(2)(b) or threatening § 87(2)(b) with the use of force during or after his frisk. He did not allege that either officer used profanity or threatened to use force at any point after § 87(2)(b) exited his vehicle. § 87(2)(b) did not mention any officers using racially offensive language at any point during the incident.

Both PO McCarthy and PO Poggi denied that either of them told § 87(2)(b) “If you move again, I’m going to knock you the fuck out.” They denied that either of them used profanity towards § 87(2)(b) or threatened to use force against him after he was removed from the vehicle. They also denied that either of them used a racial slur or referred to anybody as a “monkey.” They denied that they made any remarks about the residents of the Redfern Houses.

None of § 87(2)(b)’s videos captured this portion of the incident.

§ 87(2)(g)

Allegation (L) Force: Police Officer Michael McCarthy searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g)

It is undisputed that an officer entered § 87(2)(b)’s vehicle and searched the interior. Nothing was removed from inside of the vehicle.

§ 87(2)(b) stated that after he was frisked, he observed an officer enter his vehicle and kneel on the driver's seat. The officer who was not searching the vehicle remained at the rear of the vehicle with him and § 87(2)(b) did not recall who the officer was. The investigation identified him as PO McCarthy. PO McCarthy was leaning into the middle of the vehicle and moving around several tools and articles of clothing that § 87(2)(b) had left on the back seat. § 87(2)(b) only saw the officer for a few moments before he turned away. He did not see if any other parts of his vehicle were searched, or if any other officers entered the vehicle. § 87(2)(b) made no mention of there being marijuana or an odor of marijuana in the vehicle.

§ 87(2)(b) stated that both PO McCarthy and PO Poggi searched § 87(2)(b)'s vehicle. He did not provide details about specific actions that the officers took while in the vehicle, or what parts of the vehicle were searched. § 87(2)(b) did not mention any odor of marijuana in § 87(2)(b)'s vehicle.

Both PO McCarthy and PO Poggi stated that they detected the odor of marijuana emanating from § 87(2)(b)'s vehicle when they first approached it. PO McCarthy stated that the odor was of burning marijuana, while PO Poggi stated that he did not recall what kind of marijuana he smelled. Neither officer made any other observations about § 87(2)(b)'s vehicle or its occupants that led them to believe that there might be marijuana inside. Both officers stated that PO McCarthy alone conducted the vehicle search, and that he did so in order to search the interior for marijuana. PO McCarthy stated that he searched the areas around and under the two front seats. He targeted those particular seats because the civilians had been sitting there. He denied opening any closed containers, such as the glove box, and denied searching in the back seat. PO Poggi did not recall the extent of PO McCarthy's search. He recalled seeing PO McCarthy look over the vehicle's center console, but he did not recall if PO McCarthy searched any other parts of the vehicle.

The odor of marijuana emanating from a motor vehicle during a stop grants an officer probable cause to search the interior of the vehicle as well as the vehicle's occupants. People v. Smith, 66 A.D.3d 514 (1st Dept, 2009) (See Board Review #18: Legal Reference).

§ 87(2)(g)
[REDACTED]

Allegation (N) Abuse of Authority: Police Officer Roberto Napoli stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (O) Abuse of Authority: Police Officer Tony Peveraro stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (P) Abuse of Authority: Police Officer Roberto Napoli stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (Q) Abuse of Authority: Police Officer Tony Peveraro stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)

It is undisputed that after PO Poggi and PO McCarthy released § 87(2)(b) and § 87(2)(b) they got back into § 87(2)(b)'s vehicle and drove away. They turned off of Hassock Street and started driving north on Beach Channel Drive. As they did so, PO Napoli and PO Peveraro pulled § 87(2)(b) over. These officers were in uniform and were riding in a marked sedan. § 87(2)(b) pulled over in a gas station parking lot. The officers told § 87(2)(b) that he had been pulled over because his vehicle had illegal blue headlights. PO Napoli obtained § 87(2)(b)'s license and registration and took it back to his marked vehicle for several minutes. He later returned § 87(2)(b)'s documents and released him with a warning. § 87(2)(b) was not issued a summons. The two officers returned to the marked vehicle and began to back out of the parking lot. § 87(2)(b) then reversed his vehicle to back out as well. When he did so, the two officers initiated a second vehicle stop. The two officers accused § 87(2)(b) of "unsafe backing." PO Napoli again asked for § 87(2)(b)'s license and registration. The officers again released § 87(2)(b) without issuing him a summons. The officers drove away, leaving § 87(2)(b) and § 87(2)(b) at the gas station.

§ 87(2)(b) and § 87(2)(b) confirmed that § 87(2)(b)'s vehicle has blue headlights. They denied that § 87(2)(b) committed any moving violations prior to the initial stop at the gas station. § 87(2)(b) and § 87(2)(b) acknowledged backing his vehicle up in the gas station parking lot when he was released from the initial summons. § 87(2)(b) estimated that the closest his vehicle came to the officers' marked vehicle was five feet. § 87(2)(b) did not describe how § 87(2)(b) backed up or how close § 87(2)(b) came to the officers' marked vehicle.

PO Peveraro was interviewed at the CCRB on May 23, 2018. PO Napoli was interviewed on June 5, 2018 (See Board Review #20-21: MOS Statements). Both officers stated that they first observed § 87(2)(b)'s vehicle when he turned from Hassock Street onto Beach Channel Drive. They had not encountered § 87(2)(b) or § 87(2)(b)'s vehicle prior to that time. PO Peveraro and PO Napoli both denied that they were aware at the time of the earlier vehicle stop that PO Poggi and PO McCarthy conducted in front of the convenience store. Both officers stated that § 87(2)(b) failed to use his turn signal when turning onto Beach Channel Drive. They also noted that his vehicle had illegal blue headlights. They decided to pull § 87(2)(b) over for these reasons. When § 87(2)(b) stopped at the gas station, he told the officers that he had just been pulled over a few minutes earlier. This was the first that PO Peveraro or PO Napoli had heard of the earlier stop. PO Napoli obtained § 87(2)(b)'s license and registration, but he and PO Peveraro ultimately decided to release § 87(2)(b) with a warning rather than a

Allegation (R) Discourtesy: Police Officer Roberto Napoli spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that when PO Napoli and PO Peveraro initiated the second vehicle stop at the gas station, both officers exited their marked vehicle and approached his vehicle. PO Napoli shouted at § 87(2)(b) stating, “Now get out of the fucking car!” Both he and § 87(2)(b) exited the vehicle.

§ 87(2)(b) did not state if he or § 87(2)(b) were ordered to exit § 87(2)(b)'s vehicle during the second stop at the gas station. He made no mention of PO Napoli or PO Peveraro using profanity at any point.

§ 87(2)(b) recorded three videos on his cell phone while at the gas station. None of the videos cover the time during which this allegation occurred.

PO Napoli and PO Peveraro both stated that during the second vehicle stop, they ordered § 87(2)(b) to exit his vehicle. They did so because they felt that § 87(2)(b)'s reckless driving while backing up threatened their safety, and that the best way to guarantee their safety was to prevent him from driving his vehicle while they themselves backed out of the lot. Neither officer recalled how they phrased their commands. They denied that PO Napoli told § 87(2)(b) “Get out of the fucking car.” Both officers denied that any profanity was used towards § 87(2)(b) during their interactions with him.

§ 87(2)(g)

Officer CCRB Histories

- § 87(2)(b) § 87(2)(b) § 87(2)(b)
- § 87(2)(b) has been party to one additional CCRB complaint, but has not been named as a victim in that case (See Board Review #25: Civilian CCRB Histories).
- PO Poggi has been a member of the service for six years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- PO McCarthy has been a member of the service for seven years and has been a subject in five CCRB complaints and twelve allegations, of which two were substantiated:
 - 201501145 involved a discourtesy (gesture) allegation, which was unsubstantiated, and threat of force and discourtesy (word) allegations, were substantiated. The Board recommended, and the NYPD imposed, formalized training.

- PO Peveraro has been a member of service for three years and has been a subject in three CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Napoli has been a member of the service for four years and has been a subject in two CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- A Notice of Claim request was submitted to the NYC Office of the Comptroller on July 17, 2018. It will be included in the case file upon receipt.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date